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April 26, 2024

VIA ECF

Hon. Paul G. Gardephe
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Meaghan VerGow
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Re: *Shafer v. Morgan Stanley, et al.*, Case No. 1:20-cv-11047, Individual Rule IV.H Letter

Dear Judge Gardephe:

Pursuant to your Honor's Individual Rule IV.H, defendants in the above-captioned matter ("Morgan Stanley") write regarding Morgan Stanley's Motion for Reconsideration or Clarification of the Court's Memorandum Opinion & Order (ECF No. 86) issued on November 21, 2023.

As of Monday, April 29, Morgan Stanley's Motion for Reconsideration or Clarification will have been fully briefed (ECF Nos. 87-92) and submitted for 90 days. That same day, yet another arbitration modeled on plaintiffs' complaint will commence, and the claimants are once again arguing that this Court already decided the central issue to be arbitrated, precluding a contrary finding by the arbitration panel. The Court's order recognized that the merits issue here must be resolved *in arbitration*, not this litigation—and yet the Court's extraneous commentary in the order compelling arbitration is improperly being used to supersede merits decisions in those arbitrations, effectively depriving Morgan Stanley of its rights under the Federal Arbitration Act.

Morgan Stanley has already suffered irreparable harm in one arbitration, as detailed in Morgan Stanley's related Motion for Leave (ECF Nos. 93-94), and it faces imminent harm in the three arbitrations proceeding in the coming weeks. Given the exceedingly limited review of arbitral awards, *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 578, 586-88 (2008), the prejudice caused by the predictable misuse of the Court's order cannot be remedied after the fact. Morgan Stanley respectfully submits that the prejudice must be prevented before it occurs, either by immediately withdrawing the Court's order in relevant part or by deciding the pending Motion.

Respectfully submitted,

/s/ Meaghan VerGow

Meaghan VerGow



cc (via ECF): All counsel